



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE

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Director

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Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

Dickenson - Russell Coal Company, LLC / Moss #3 Prep Plant
Registration No. 10235

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301, 1307, 1309, 1316 and 10.1 – 1184, between the State Air Pollution Control Board and Dickenson - Russell Coal Company, LLC for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Dickenson - Russell Coal Company, LLC / Moss #3 Prep Plant, St. Rte. 615 located in Clinchfield / Russell County, Virginia.

SECTION C: Findings of Facts and Conclusions of Law of the Board

1. On April 13, 2007, the Virginia Department of Environmental Quality – SWRO received Dickenson-Russell Coal Company's Title V Semiannual Monitoring Report for the reporting period 7-1-06 to 12-31-06. On April 17, 2007 Air Compliance Engineer, Tracey Blalock, reviewed the submittal. The report review and subsequent file review indicated that the permittee had not submitted the construction date, start-up date and anticipated date of performance tests (VEEs) of the equipment to be constructed (as listed in Condition 2 of the permit). Also the required VEEs were not performed within 180 days after start-up. The following deficiencies were documented:

- A. Part 60 – Standards of Performance for New Stationary Sources – Subpart A – General Provisions - c 60.8(a) Performance tests. “Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).” Subpart Y – Standards of Performance for Coal Preparation Plant - § 60.250(a) Applicability and designation of affected facility. “The provisions of this subpart are applicable to any of the following affected facilities in coal preparation plants which process more than 181 Mg (200 tons) per day: Thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.” § 60.254(b)(2) Test methods and procedures. “Method 9 and the procedures in §60.11 shall be used to determine opacity.” § 60.11(b) Compliance with standards and maintenance requirements. “Compliance with opacity standards in this part shall be determined by conducting observations in accordance with Method 9 in appendix A of this part, any alternative method that is approved by the Administrator, or as provided in paragraph (e)(5) of this section. For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard).”

The required VEEs were not performed within 180 days after start-up.

- B. Permit condition No. 15, of Dickenson-Russell Coal Company's construct and operate permit dated April 8, 2005 states, “Visible Emissions Evaluation - Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted by the permittee on the subject equipment to be constructed as listed in Condition 2. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average. The details of the tests are to be arranged with the Director, Southwest Regional Office. The evaluation shall be performed, within 60 days after achieving the maximum production rate at which the permitted facility will be operated but in no event later than 180 days after start-up of the permitted facility. Two copies of the test result shall be submitted to the Director, Southwest Regional Office within 45 days after test completion and shall conform to the test report format enclosed with this permit.”

The required VEEs were not performed within 180 days after start-up.

- C. Permit condition No. 16, of Dickenson-Russell Coal Company's construct and operate permit dated April 8, 2005 states, “Initial Notifications - The permittee shall furnish written notification to the Director, Southwest Regional Office:
 - a. The actual date on which construction of the equipment to be constructed (as listed in Condition 2 of this permit) commenced within 30 days after such date.

- b. The actual start-up date of the equipment to be constructed (as listed in Condition 2 of this permit) within 15 days after such date.
- c. The anticipated date of performance tests of the equipment to be constructed (as listed in Condition 2 of this permit) postmarked at least 30 days prior to such date..."

The permittee did not furnish the construction date, start-up date and anticipated date of the VEEs.

- 2. On May 2, 2007, DEQ sent a Notice of Violation Letter (NOV No. 5-2-SWRO-2007) by Certified Mail-Return Receipt Request, to Dickenson - Russell Coal Company, LLC, informing the Company that DEQ had reason to believe that the violations referenced in Section C1 had occurred.
- 3. Dickenson - Russell Coal Company LLC submitted a notification of start of operation and start of construction on April 11, 2007. The subsequent VEEs were performed on April 11-13, 2007.
- 4. The following regulations may be applicable in part or whole to the above listed permit deficiencies : 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits..."

40 CFR § 60.8	Standards of Performance for New Stationary Sources – Subpart A- General Provisions – Performance Tests
9 VAC 5-50-30	New and Modified Stationary Sources – Special Provisions - Performance Testing
9 VAC 5-50-50	New and Modified Stationary Sources – Special Provisions - Notification, records and reporting
9 VAC 5-50-410	New and Modified Stationary Sources – Emission Standards – Designated standards of performance
9 VAC 5-80-1200	Permits for New and Modified Stationary Sources – Compliance determination and verification by performance testing

- 5. On May 3, 2007, DEQ was contacted by Dickenson - Russell Coal Company, LLC in response to the NOV. A meeting was scheduled for May 15, 2007, at the DEQ office in Abingdon, to discuss the issues of the enforcement action.

SECTION D: Agreement and Order

- 1. By virtue of the authority granted it pursuant to Va. Code §§ 10.1 – 1309 and 10.1-1316 and upon consideration of Va. Code § 10.1 – 1186.2, the Board orders Dickenson - Russell Coal Company, LLC and Dickenson - Russell Coal Company, LLC voluntarily agrees, to a civil charge of \$11,376.56 in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include Dickenson - Russell Coal Company, LLC's Federal ID number and shall identify that payment is being made as a result of this Order. The payment shall be made within 30 days of the effective date of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Dickenson - Russell Coal Company, LLC for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Stationary Source Permit to Construct and Operate Permit dated April 8, 2005.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Dickenson - Russell Coal Company, LLC as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. By entering into this Order, Dickenson-Russell Coal Company, LLC admits the jurisdictional allegations, but does not admit factual findings, or conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, Dickenson-Russell Coal Company, LLC agrees not to challenge the jurisdictional allegations.
5. Dickenson - Russell Coal Company, LLC consents to venue in the Circuit Court of Russell County for any civil action taken to enforce the terms of this Order.
6. Dickenson - Russell Coal Company, LLC declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Dickenson - Russell Coal Company, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Dickenson - Russell Coal Company, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Dickenson - Russell Coal Company, LLC must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Dickenson - Russell Coal Company, LLC shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

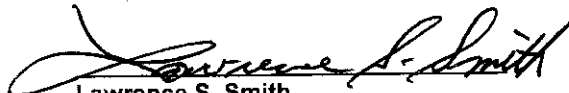
- 10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 11. This Order shall become effective upon execution by both the Director or his designee and Dickenson - Russell Coal Company, LLC. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Dickenson - Russell Coal Company, LLC. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Dickenson - Russell Coal Company, LLC from its obligation imposed in this Order, shall not operate to Dickenson - Russell Coal Company, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

13. By its signature below, Dickenson - Russell Coal Company, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 2nd day of July, 2007


Michael D. Overstreet, Regional Director
Department of Environmental Quality

Dickenson - Russell Coal Company, LLC voluntarily agrees to the issuance of this Order.


Lawrence S. Smith
Authorized Agent
Dickenson - Russell Coal Company, LLC
Date: 6/29/07


Commonwealth of Virginia

City/County of WISE

The foregoing document was signed and acknowledged before me this 29th day of

June, 2007 by Lawrence S. Smith on behalf of
Dickenson - Russell Coal Company, LLC

Date: 6/29/07


Karis T. Davidson
Notary Public

My commission expires: 1/31/08

